No. 94-226

Supreme Court, U.S.
FILED
NOV 7 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

THE FLORIDA BAR,

Petitioner,

vs.

G. STEWART McHENRY; WENT FOR IT, INC.; and JOHN T. BLAKELY,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF ALABAMA STATE BAR ASSOCIATION, ARKANSAS BAR ASSOCIATION, ATLANTA (GA) BAR ASSOCIATION, BROOKLYN (NY) BAR ASSOCIATION, THE COLORADO BAR ASSOCIATION, DADE COUNTY (FL) BAR ASSOCIATION, DELAWARE STATE BAR ASSOCIATION, ESSEX COUNTY (NJ) BAR ASSOCIATION, STATE BAR OF GEORGIA, ILLINOIS STATE BAR ASSOCIATION, THE IOWA STATE BAR ASSOCIATION, JACKSONVILLE (FL) BAR ASSOCIATION, KANSAS BAR ASSOCIATION, KENTUCKY BAR ASSOCIATION, STATE BAR OF MICHIGAN, THE MISSISSIPPI BAR, MONROE COUNTY (NY) BAR ASSOCIATION, STATE BAR OF MONTANA, BAR ASSOCIATION OF NASSAU COUNTY, N.Y., INC., NEW HAMPSHIRE BAR ASSOCIATION, NEW JERSEY STATE BAR ASSOCIATION, OHIO STATE BAR ASSOCIATION, SOUTH CAROLINA BAR, SUFFOLK COUNTY (NY) BAR ASSOCIATION, TENNESSEE BAR ASSOCIATION, STATE BAR OF TEXAS, UTAH STATE BAR, AND WEST VIRGINIA STATE BAR, AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

JAMES L. BRANTON, President
State Bar of Texas
711 Navarro Street
737 Travis Park Plaza Building
San Antonio, Texas 78205
(210) 224-4474

Counsel of Record for Amici Curiae

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

Alabama State Bar Association
Broox G. Holmes, President
P.O. Box 671
Montgomery, AL 36101

Arkansas Bar Association
Robert L. Jones, III, President
P.O. Box 2023
Fort Smith, AZ 72902-2023

Atlanta (GA) Bar Association
T. Jackson Bedford, Jr., President
2500 The Equitable Bldg.
100 Peachtree St.
Atlanta, GA 30303

Brooklyn (NY) Bar Association
Miriam Cyrulnik, President
123 Remsen St.
Brooklyn, NY 11201-4212

The Colorado Bar Association
Frances A. Koncilja, President
1700 Broadway, # 2050
Denver, CO 80290

Dade County (FL) Bar Association
Francisco R. Angones, President
123 N.W. First Ave. #214
Miami, FL 33128

Delaware State Bar Association
R. Franklin Balotti, President
F. Michael Parkoswki
116 W. Water St.
Dover, DE 19901

Essex County (NJ) Bar Association
Floyd Shapiro, President
One Newark Center, 16th Floor
Newark, NJ 07102

State Bar of Georgia
Harold Turner Daniel, Jr., President
1201 W. Peachtree St., N.W.
Suite 3100
Atlanta, GA 30309

Illinois State Bar Association
David A. Decker, President
Dennis A. Randleman, General Counsel
424 South Second St.
Springfield, IL 62701

The Iowa State Bar Association
Nicholas V. Critelli, Jr.
Hedo Zacherle
Fifth Floor, 317 Sixth Ave.
Des Moines, IA 50309

Jacksonville (FL) Bar Association
Henry M. Coxe, III, President
424 E. Monroe St.
Jacksonville, FL 32202

Kansas Bar Association
Linda S. Trigg, President
304 North Lincoln
Liberal, KS 67901

Kentucky Bar Association
Stephen D. Wolnitzek, President
P.O. Box 352
Covington, KY 41012-0352

State Bar of Michigan
Jon R. Muth, President
Marcia L. Proctor, General Counsel
306 Townsend St.
Lansing, MI 48933-2083

The Mississippi Bar
W. Scott Welch, III, President
Michael B. Martz, General Counsel
P.O. Box 22567
Jackson, MS 39225

Monroe County (NY) Bar Association
C. Bruce Lawrence, President
One Exchange St.
5th Floor
Rochester, NY 14614-2098

State Bar of Montana
Robert J. Phillips, President
201 West Main, Suite 104
Missoula, MT 59802

Bar Association of Nassau County, N.Y., Inc.
Grace D. Moran, President
Benedict J. Pollio, Chair of Committee on Advertising
Chris G. McDonough Committee on Advertising
6900 Jericho Turnpike
Syosset, NY 11791

New Hampshire Bar Association
Jack P. Crisp, Jr., President
112 Pleasant St.
Concord, NH 03301

New Jersey State Bar Association
William B. McGuire, President
One Constitution Sq.
New Brunswick, NJ 08901-1500

Ohio State Bar Association
Albert L. Bell General Counsel
1700 Lake Shore Dr.
Columbus, OH 43204

BEST AVAILABLE COPY

South Carolina Bar
J. Rutledge Young, Jr.,
President
950 Taylor St.
Columbia, SC 29202

Suffolk County (NY) Bar
Association
John H. Gross, President
560 Wheeler Road
Hauppauge, NY 11788-4357

Tennessee Bar Association
Harris A. Gilbert, President
3622 West End Ave.
Nashville, TN 37219

Utah State Bar
John C. Baldwin,
Executive Director
Steven Trost, Chief
Disciplinary Counsel
645 South 200 East, # 310
Salt Lake City, UT 84111

West Virginia State Bar
Barbara L. Baxter,
President
2006 Kanawha Blvd., E.
Charleston, WV 25311

Counsel for Amici Curiae

INTEREST OF AMICI CURIAE

The various state and local bar associations which join in this amici brief have a cumulative membership which totals in excess of 300,000 attorneys. Each association either has some degree of responsibility for regulating lawyer advertising, or possesses a unique perspective on the effects of the current restrictions regarding the regulation of attorney advertising as experienced in their various activities involving the public and their own members.

Those bars with a regulatory role in lawyer advertising have direct knowledge as to the effects of unrestricted lawyer advertising, as permitted by *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) and its progeny, on the administration of justice, the provision of legal services in their states, and the public. The experience of these associations includes the drafting of pertinent disciplinary rules, the enforcement of those measures with respect to many and varied lawyer communications, and the receipt of commentary on attorney advertising in the context of particular client or citizen complaints.

The other bar associations appearing herein – because of their member and public opinion surveys, lawyer referral service reports, and other authoritative information sources – can further attest to the effects of lawyer advertising on citizen confidence in our judicial system, and on public perception regarding the current level of professionalism within their particular legal communities.

These interests are present and continuing, and will likely be affected by any decision of this Court in the instant case.

Letters of consent to file this brief have been lodged with this Court pursuant to Supreme Court Rule 37.

SUMMARY OF ARGUMENT

The bar associations joining in this brief urge this Court to return to the states the authority to regulate lawyer advertising which existed prior to this Court's opinion in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), for the reasons that:

1) unrestrained lawyer advertising has severely eroded the public's respect for our system of justice and in the legal profession; and

2) amici's experience over the past 17 years has demonstrated that the state bars and the courts are incapable of insuring, without substantial restraints not permissible under current authority, that the commercial advertisement of legal services will not be inherently misleading to the public.

ARGUMENT

The bar associations joining in this brief support the position of The Florida Bar in the instant case and urge the Court to reexamine its decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) so as to grant to the states greater latitude to regulate lawyer advertising consistent with other forms of commercial advertising.

The collective experience of the bar associations joining in this brief in dealing with the regulation of lawyer advertising in the past 17-plus years has made prophetic the observations of Justice Powell that the *Bates* holding "seriously understates the difficulties, and overestimates the capabilities of the bar – or indeed of any agency public or private – to assure with a reasonable degree of effectiveness that price advertising can at the same time be both unrestrained and truthful." *Bates*, 433 U.S. at 396 (Powell, J., concurring in part and dissenting in part).

As Justice Powell noted, the recognition of First Amendment protections for attorney advertising would "effect profound changes in the practice of law, viewed for centuries as a learned profession." *Id.* at 389.

Notwithstanding *Bates* and all its progeny, this issue "nonetheless remains a serious enforcement problem," *Id.* at 395, in need of further consideration by this Court.

CONCLUSION

The Court is urged to revisit its decision in *Bates* and broaden the authority of the States to regulate commercial advertising by lawyers.

Respectfully submitted,

JAMES L. BRANTON, President
State Bar of Texas
711 Navarro Street
737 Travis Park Plaza Building
San Antonio, Texas 78205
(210) 224-4474

Counsel of Record for Amici Curiae